MANU/BH/0056/1985

Equivalent Citation: AIR1985Pat191

IN THE HIGH COURT OF PATNA
FULL BENCH

Civil Writ Jurn. Case No. 2314 of 1984

Decided On: 12.11.1984

Appellants:**Siyaram Das and Ors.**
Vs.
Respondent:**State of Bihar and Ors.**

Hon'ble Judges/Coram:
S.S. Sandhawalia, C.J., B.P. Jha and N.P. Singh, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: B.P. Bhagatand Sheojee Prasad, Advs.

For Respondents/Defendant: C.K. Sinha,Govt. Pleader, C.S. Prasadand G. Narayan, Jr.Counsel to Govt. Pleader

JUDGMENT

S.S. Sandhawalia, C.J.

1. Whether Section 45-B of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 mandates that the decision afresh of a proceeding disposed of by a Collector under the said Act must be done by the State Government or by the authorised Collector of the district alone -- is the significant question necessitating this reference to the Full Bench. Primarily at issue is the correctness of the view in Kesara Devi v. State of Bihar MANU/BH/0176/1984 : 1984 PLJR 209 : AIR 1984 (Pat) 289.

2. Mahanth Siyaram Das, Petitioner No. 1, is the Shebait of Bancholha Math at Bancholha, which is a public trust registered as such under the provision of the Bihar Hindu Religious Trust Act, 1951. The Math aforesaid owns lands and other agricultural properties for religious purposes. It is the case that during the absence of petitioner No. 1 on pilgrimage in the years 1973 to 1975 one Mahanth Manmohan Das used to look after the affairs of this Math and in the said period nearly 13 acres of the Math property were declared surplus in the ceiling proceedings held under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the 'Act'). The petitioners thereafter preferred a petition under Section 45B of the Act before the Collector of Saharsa praying for reopening the case and deciding it in accordance with law, but the same was dismissed in default. The matter was then carried to the Board of Revenue and (vide annexure 3) the Additional Member of the Board set aside the order and directed the Collector of the district to hear the parties on merits. It would appear that on the bifurcation of the district the matter was transferred to the Collector of Madhipura who, in turn, sent the petition to the Sub-divisional Officer, Madhipura, for disposal afresh. The latter, after hearing the petitioners, declined to vary the previous order or to reconsider the matter about the classification of the lands in question and the grant of one unit to the deity installed in the Math. The petitioners thereupon appealed to

the Collector of the district who upheld the order (vide annexure 1). The primary grievance of the petitioners is that under Section 45B of the Act the Collector of the district alone could hear and decide the matter afresh and had no jurisdiction to transfer the same to the Sub-divisional Officer and consequently the orders are void and without jurisdiction.

3. When this case came up for admission before the Division Bench, firm reliance was placed on Kesara Devi v. State of Bihar AIR 1984 (Pat) 289 (supra) for contending that the District Collector had no jurisdiction to refer the matter for disposal to any subordinate authority under Section 45B. Expressing some doubts about the correctness of the decisions aforesaid the matter was referred to a larger Bench for reconsideration and that is how it is before us.

4. As earlier, learned counsel for the writ petitioners has placed firm reliance on the observations in the case of Kesara Devi v. State of Bihar AIR 1984 (Pat) 289 for pressing his solitary contention that Section 45B mandates that the Collector of the District alone could hear and dispose of the matter afresh and could not refer the same to any subordinate authority. Apart from precedent, this construction was urged for acceptance on the language of the statute as well.

5. Since the controversy here inevitably centres on the language of Section 45 B of the Act, it is apt to read the same at the outset:

> "45B. State Government to call for and examine records : --
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> 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 provision of the Act."

6. To appreciate the rival contentions canvassed before us and in view of some intricacy of construction, it is necessary first to construe the provision against the legislative background of Section 45B. It seems unnecessary to delve deeply into the enactment and the innumerable changes introduced in the Act at disconcertingly frequent intervals from its enforcement in 1961. It would perhaps suffice to notice that originally the Act did not contain any provision corresponding to Section 45B and vesting the State Government with the power to re-open cases and direct their disposal afresh. It was only in the wake of the wide ranging structural changes made in the statute by the amending Act 22 of 1976 that this power has now been conferred. Therefore, it seems possible to infer that in view of the very large and substantial changes made by the amending Act of 1976 it was thought necessary to also have the power of re-opening cases disposed of by a Collector under the Act and to have them decided afresh in accordance with the provisions of the Act as amended. The larger scope and import of Section 45B has been so well elaborated in the exhaustive judgment of the Division Bench in Shri Thakurji Ram Jankiji v. State of Bihar 1983 BLJR 33 that it seems unnecessary to traverse that ground again. It would suffice to reiterate here that the power here is a quasi-judicial power and can ordinarily be exercised only after giving an adequate opportunity of hearing to the parties.

7. For reasons of terminological exactitude it may be pin-pointed that there is a shade of distinction betwixt the "Collector under the Act" and the "Collector of the district". The two for the purposes of the statute are distinct and separate. 'Collector'

stands defined in Section 2(b) of the Act as under :

> " 'Collector' includes an Additional Collector, appointed by the State Government to discharge all or any of the functions of a Collector under this Act;"

It would be plain from the above that for the purposes of the Act the State Government can designate any officer as the Collector under the Act with the limitation that he should not be below the rank of a Sub-Deputy Collector. It was common ground before us that usually, if not invariably, the exercise of power under the Act and its implementation and determination of ceiling and surplus matters is left in the hands of the Collectors under the Act. Equally it is not any and every Collector of the district who is now conferred jurisdiction by Section 45B but only the one who may be so authorised for the said purpose by the State Government. For convenience, hereinafter he is referred to as the 'authorised Collector'.

8. It then calls for pointed notice that the power under Section 45B has been given in very widely couched terms to the State Government or the Collector of the district authorised in this behalf to direct the re-opening and disposal afresh of any proceeding disposed of by a Collector under the Act, if it thinks fit. The discretion has thus been conferred in wide ranging terms. No express or statutory limitations are prescribed. It is plain that though the power here is a quasi-judicial one, it has been conferred with the widest amplitude yet this power cannot be construed as altogether unbounded. The language of the section plainly points to one basic limitation on the power of re-opening the earlier proceedings. It was argued before us that this power can be exercised dehors the hierarchy of the authority deciding the matter earlier. As an extreme case it was suggested that even if the matter may have been decided by a superior authority like the Board of Revenue or, for that matter, may have gone up to the High Court or the Supreme Court, it would still be possible under Section 45B to re-open the matter by the authorised Collector of the district. I am unable to subscribe to this extreme proposition. On principle itself, it appears incongruous, if not absurd, that the authorised Collector should have the power to direct re-opening and decision afresh with regard to the matters which may have been finalised by his superior authorities, like the Commissioner or the Board of Revenue or, for that matter, by the High Court and even when the lis may have been carried to the final court itself. This apart, reading Section 45B in sequence would show that the power is first given to call for and examine any record of any proceeding. If one may say • so, the use of the phraseology 'to call directed for in a way implies the summoning or a direction by a superior authority to an inferior one to produce or forward the record. It is not easy to subscribe to the theory that a subordinate would call for the records from its superior. Consequently, the very use and employment of these words would indicate that the calling of the record by the State Government or the authorised Collector is only from authorities subordinate in rank. There is even a further limitation or qualification with regard to such a proceeding. It is not any and every record that is to be called for but only of a proceeding disposed of by a Collector under the Act. The power, therefore, to call for and examine and, obviously, the consequential action of reopening and disposal afresh is limited to the records of proceedings disposed of by a Collector under the Act only. It is not the power to call for and examine the records of proceedings disposed of by superior authorities. I am firmly inclined to the view that the wide ranging power under Section 45-B to direct re-opening and disposal afresh is plainly limited to proceedings disposed of by the authorities up to the level of the Collector under the Act and no higher. To hold otherwise would, in a way, be doing violence to the plain language of the statute and

also would be contrary to principle.

9. Now it appears to me that the real clue to the somewhat obscure provision of Section 45B is provided by the meaningful use of the words 'direct' and 'be re-opened and disposed of afresh'. Though perhaps the employment of any one of these may not have been conclusive but when both are viewed collectively, it would leave little manner of doubt that the disposal afresh is not necessarily to be by the State Government or the authorised Collector. To my mind, the use of the word 'direct' here is both crucial and in a way conclusive. As was argued plausibly on behalf of the respondents, the word 'direct' by the very nature of things implies at least two persons, namely, the one who directs and the other who has been directed. To coin some phraseology, it necessarily implies a 'director' and what may the called a 'directee'. Plainly enough one cannot and does not direct one's own self. Consequently, when the statute designedly employs these words and says that the State Government and the authorised Collector may direct, it is plain that such a direction is to issue inevitably to an authority subservient to it. To repeat, such direction is not to be issued to itself. It is a sound canon of construction that in a statute every word must be given a meaning and that the Legislature does not waste its words. Therefore, the word 'direct' in Section 45B cannot be ignored as mere surplusage. So construed, Section 45B implies a twin direction by the State Government or the authorised Collector to a subservient authority to first reopen the case and thereafter to dispose it of afresh in accordance with the provisions of the Act.

10. Negatively, it calls for notice that the Legislature, whenever it desires that the superior authority must inflexibly decide the case itself, employs known and categoric terminology to express its intent. Even dehors the word 'direct', in such cases the language employed is specific that the matter must be decided by the authority itself if it happens to be a superior one. Reference in this connection may pointedly be made to Sub-section (10) of Section 45F of the Bihar Tenancy Act. 1885. as now amended. Therein it is mandated in terms that the Collector will decide the dispute himself. On behalf of the respondents our attention was similarly drawn to Section 46(4) of the Bihar Finance Act, which, by conferring similar power on the Commissioner, expressly uses the words "which he thinks proper" in the context of the matter of the re-decision of the issues. Similarly, Section 5A(2) of the Land Acquisition Act, as amended by the Bihar Amendment of 1960, clearly says that the State Government may pass such order as it may think fit. By way of analogy, therefore, it is patent that whenever the intent of the Legislature is that the superior authority should inflexibly dispose of the matter itself, then it makes its intent clear by using unequivocal phraseology to the effect.

11. On behalf of the writ petitioners some tenuous reliance was sought to be placed on Section 18 of the Bihar Sales Tax Act. 1959. I am unable to see how this, in any way, advances their case, Therein the power to re-assess any I escaped assessment or under-assessment has been vested in the prescribed authority and in terms it is laid down that such prescribed authority would proceed to assess or re-assess the amount of tax due from the dealer in respect of such turnover. Obviously, in such cases the prescribed authority alone is vested with the power to re-assess when the other requirements of Section 18 are satisfied. Similarly, some vain reference was also made to Section 147 and 148 of the Income Tax Act, 1961. It is significant to recall that these provisions do not even remotely employ the phraseology of the word 'direct' or the word 'reopen'. The language employed in the two sections again leaves no lacuna or doubt about the intention that the matter is to be decided by the Income

Tax Officer himself and that he should assess or re-assess the income escaping re-assessment. With respect, these provisions far from aiding the stand of the writ petitioners seem to run counter thereto for the aforesaid triple reason.

12. Equally the argument ab inconvenienti (An argument based upon hardship of case and inconvenience to which different course of reasoning would lead -- Ed.) with regard to the construction canvassed on behalf of the writ petitioners calls for notice. As has already been observed earlier, the . void 'Collector' stands defined under Section 2(b) of the Act and is separate and distinct from the Collector of the district who alone can be authorised under Section 45B. It was common ground before us that the special provisions of the Ceiling laws are normally applied by and the powers thereunder are exercised by the Collectors appointed under the Act. This somewhat intricate jurisdiction is within the ken of officers specially appointed by the State. To assume that in every case of re-opening under Section 45B, the authorised district Collector himself would be obliged to dispose of the matter afresh, may first well place an impossible burden on the Collector of the district saddled as he is with multifarious duties and unaware as he might be of the intricacies and specialities of the Ceiling laws. It is well known that today the Collector of the district has become primarily and mainly an executive functionary and it may well be anomalous to thrust a strictly intricate judicial function on him akme to the exclusion of any other authority.

Therefore, the construction canvassed on behalf of the writ petitioners would, in actual practice, lead to anomalies and even hardship to the litigants. What has been said in this context about the authorised district Collector applied with even greater force in relation to the State Government where it directs to re--open the proceedings, Admittedly Section 45B does not expressly or impliedly visualise a delegation of this judicial or quasi- judicial power by the State Government. Normally the presumption of any such delegation is barred and admittedly no rules have been framed also which authorise any one else to exercise the powers of the State Government under Section 45B though it is even doubtful if it could be so done. Therefore, such a power at the highest can be exercised by the State Cabinet and at the lowest level may perhaps be exercisable by the Minister of the Department concerned. Would the statute envisage that in all matters where the State Government directs the re-opening, the Minister concerned should dispose of the matter afresh? In a wide spread State like that of Bihar that by itself would impose an impossible burden on the Minister concerned to dispose of all cases judicially for the whole of the State and even a greater hardship on the parties when such fresh determination could be done only at the level of the Minister concerned at Patna. This apart, it does not seem easy to thrust this primarily a judicial or quasi-judicial power on an authority which is entirely executive and primarily political. To my mind, the construction, canvassed by the writ petitioners would lead to patently anomalous, if not mischievous, results, and it is a sound rule to avoid a construction which may lead to such consequences.

13. Inevitably a reference must be made to Kesara Devi v. State of Bihar AIR 1984 (Pat) 289 (supra). A perusal of the very brief judgment would plainly indicate that the matter was not adequately canvassed before the Bench. The issue was treated primarily as one of first impression, and neither the earlier precedents nor the finer nuances of the language including the use of the words ' direct and "Be re-opened and disposed of afresh" were high-lighted. The analogy of sister statutes in this context was not forcefully brought to the notice of the Bench. The resulting anomalies of the construction missed notice. With the greatest respect and deference, therefore,

it has to be held that the said case does not lay down the law correctly and is hereby overruled.

14. To conclude, the answer to the question posed at the very outset is rendered in the negative, and it is held that Section 45B of the Act does not necessarily mandate that the decision afresh must inflexibly be made by the State Government or by the authorised Collector of the district alone.

15. Once it is held as above, it necessarily follows that the solitary contention rased on behalf of the writ petitioners that the matter could not be decided at a level below the Collector of the district must fail. The writ petition has consequently to be dismissed. But in view of the earlier precedent in Kesar Devi's case AIR 1984 (Pat) 289 (supra) I would decline to burden the petitioners with costs.

B.P. Jha, J.

16. I agree.

N.P. Singh, J.

17. I agree.