Kusheshwar Prasad Singh vs State Of Bihar & Ors on 19 March, 2007

Equivalent citations: 2007 AIR SCW 1911, 2007 (2) AIR JHAR R 855, AIR 2007 SC (SUPP) 122, (2007) 4 SCALE 534, 2007 (11) SCC 447, (2007) 53 ALLINDCAS 80 (SC)

Author: C.K. Thakker

Bench: C.K. Thakker, Lokeshwar Singh Panta

CASE NO.:
Appeal (civil) 7351 of 2000

PETITIONER:
KUSHESHWAR PRASAD SINGH

RESPONDENT:
STATE OF BIHAR & ORS

DATE OF JUDGMENT: 19/03/2007

BENCH:
C.K. THAKKER & LOKESHWAR SINGH PANTA

JUDGMENT:

J U D G M E N T C.K. THAKKER, J.

The present appeal is filed by the appellant against the judgment and order passed by the Division Bench of the High Court of Patna on August 13, 1989 by which it dismissed the Letters Patent Appeal No. 1177 of 1998 and confirmed the order passed by a Single Judge on September 24, 1998 in Civil Writ Jurisdiction Case No. 3008 of 1998. Brief facts of the case leading to the present appeal are that a return was filed by the landholder under the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as 'the Act'). It was alleged that the landholder possessed excess land. A draft statement under Section 10 was issued by the Collector under the Act. The landholder objected to the proceedings and asserted that he did not possess land in excess of ceiling area. An enquiry was made and verification reports were submitted by the Circle Officers (Anchal Adhikaris). The Deputy Collector, Land Reforms, (DCLR) Samastipur, vide his order dated January 07, 1976 upheld the objection of the landholder and recorded a finding that the landholder did not possess surplus land and the proceedings were required to be dropped. The case was accordingly disposed of. No appeal was filed against the said decision and it had become final. No 'final statement', as required under Section 11 of the Act, however, was issued or published by the authority. The Act was amended in April, 1981 (Bihar Act 55 of 1982) and after Section 32, Sections 32A & 32B came to be inserted. Whereas Section 32A provided for abatement

of appeal, revision, review and reference, Section 32B permitted initiation of fresh proceedings in certain cases. In the present case, as already noted earlier, no final statement under Section 11 was issued. It appears that one Hridya Narayan Yadav, Secretary, Kisan Sabha Darbhanga-cum-Member, Darbhanga District Committee, Bhartiya Communist Party (Marxist), Darbhanga moved an application in the Court of Additional Collector, Land Ceiling, Darbhanga along with an affidavit alleging therein that the landholder had more lands than prescribed under the Ceiling Act, but correct facts were not disclosed when the return was filed under the Act by the landholder in 1973-74. Fresh proceedings were, therefore, initiated in the year 1993 in Land Ceiling Case No. 65 of 1992-93 and statement of landholder was recorded. The Additional Collector, after considering the objection of the landholder and referring to details furnished by Circle Officers held that the landholder possessed 96.40 acres of land. He was entitled to only one unit. Thus, he could retain only 25 acres of Category III land and the remaining land of 71.40 acres was required to be declared surplus. An order was passed to that effect. A direction was also given to take appropriate steps for issuance of final statement under Section 11 of the Act. The appellant preferred an appeal against the said order before the Collector under Section 30 of the Act. It was, inter alia, contended that the order dated January 7, 1976 declaring that the landholder did not possess excess land, had not been challenged and attained finality. The notification and final statement which was required to be issued under Section 11 of the Act had not been issued by the authorities. Non-issuance of final statement cannot adversely affect the landholder. It was also submitted that the Ceiling Case was of 1973-1974. It was over in 1976 and it cannot now be reopened. It was also urged that Section 32B came to be inserted only in 1981, but before that final order was passed in 1976. No fresh proceedings thus could be initiated under the Amendment Act of 1982. It was, therefore, submitted that the order passed by the District Collector was liable to be set aside.

The Collector, however, by an order dated June 2, 1997 dismissed the appeal and confirmed the order passed by the Additional Collector, Darbhanga and observed that the landholder was in possession of excess land. The landholder approached the Board of Revenue by filing a Revision Petition under Section 32 of the Act which was also dismissed by the Member, Board of Revenue, Bihar vide his order dated January 13, 1998.

The aggrieved landholder then instituted a writ petition before the High Court of Patna. A counter affidavit was filed on behalf of the respondent-State in which a stand was taken that Land Ceiling Case No. 65 of 1992-93 was in fact renumbered of the old case and proceedings were started afresh in exercise of power under Section 32B of the Act and such a course was permissible in the light of the fact that after the order was passed on January 7, 1976, no final statement was issued under Section 11 of the Act. Initiation of fresh proceedings was, therefore, permissible and the order passed by the Additional Collector, Darbhanga and Collector, Darbhanga could not be said to be unlawful.

The learned Single Judge noted that though the order was passed in 1976, no final notification under Section 11(1) of the Act was issued prior to April 9, 1981 when the Act was amended and Sections 32A and 32B were added. In the circumstances, observed the learned Single Judge, initiation of fresh proceedings was permissible and the order passed in those proceedings could not be objected. The writ petition was, therefore, dismissed. The Division Bench in Letters Patent Appeal confirmed the order of the learned Single Judge. The said order has been challenged in this

Court.

On February 4, 2000, notice was issued by this Court and ad-interim relief was granted. The matter was thereafter adjourned from time to time. On December 11, 2000, leave was granted. The matter has now been placed before us for final hearing.

The learned counsel for the appellant contended that the proceedings had been concluded and final order was passed under the Act as early as on January 7, 1976 and that order had become final. Nobody had challenged it. Legality of that order could not be subsequently considered by initiating fresh proceedings. It was incumbent on the authority to take consequential action of issuance of final statement under sub-section (1) of Section 11 of the Act immediately after the order was passed, but it was not done. There was thus failure to discharge statutory duty by the authorities which cannot adversely or prejudicially affect the interest of the landholder. It was also submitted that there was no question of application of Section 32B of the Act which was added only in April, 1981. Fresh proceedings initiated in 1992-93, therefore, were without jurisdiction and all actions taken in those proceedings are liable to be set aside. It was further submitted that it was due to mala fide act by Hridya Narain Yadav that proceedings were started in 1992-93. According to the learned counsel, neither the authorities nor the High Court considered the provisions of law and the orders are contrary to law.

The learned counsel for the respondent-authorities supported the orders and submitted that they were right in holding that since no final notification under Section 11(1) was issued, the proceedings could not be said to have been concluded and in view of amendment in 1981, action could be taken under Section 32B of the Act and appellant had no right to make grievance against it.

Having considered the rival submissions of the learned counsel for the parties, in our opinion, the appeal deserves to be partly allowed. So far as the contention of the appellant that the proceedings had been initiated in 1973- 74 and final order was passed on January 7, 1976 is not disputed and cannot be disputed. If it is so, submission of the appellant is well founded that final statement as required by sub-section (1) of Section 11 ought to have been issued and effect ought to have been given to the final order. Admittedly, no appeal was filed. Nor the order was challenged by any party. The appellant is right in contending that final statement ought to have been issued immediately or in any case within 'reasonable time'. The authority cannot neglect to do that which the law mandates and requires doing. By not issuing consequential final statement under Section 11(1) of the Act, the authority had failed to discharge its statutory duty. Obviously, therefore, the appellant is justified in urging that such default in discharge of statutory duty by the respondents under the Act cannot prejudice him. To that extent, therefore, the grievance of the appellant is well-founded. The appellant is also right in contending before this Court that the power under Section 32B of the Act to initiate fresh proceedings could not have been exercised. Admittedly, Section 32B came on the statute book by Bihar Act 55 of 1982. The case of the appellant was over much prior to the amendment of the Act and insertion of Section 32B. The appellant, therefore, is right in contending that the authorities cannot be allowed to take undue advantage of its own default in failure to act in accordance with law and initiate fresh proceedings.

In this connection, our attention has been invited by the learned counsel for the appellant to a decision of this Court in Mrutunjay Pani & Another v. Narmada Bala Sasmal & Another, AIR 1961 SC 1353, wherein it was held by this Court that where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim 'Commodum ex injuria sua nemo habere debet' (No party can take undue advantage of his own wrong).

In Union of India & Ors. v. Major General Madan Lal Yadav (Retd.), (1996) 4 SCC 127, the accused-army personnel himself was responsible for delay as he escaped from detention. Then he raised an objection against initiation of proceedings on the ground that such proceedings ought to have been initiated within six months under the Army Act, 1950. Referring to the above maxim, this Court held that the accused could not take undue advantage of his own wrong. Considering the relevant provisions of the Act, the Court held that presence of the accused was an essential condition for the commencement of trial and when the accused did not make himself available, he could not be allowed to raise a contention that proceedings were time-barred. This Court referred to Broom's Legal Maxims (10th Edn.) p. 191 wherein it was stated;

> " it is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in Courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure".

It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrong doer ought not to be permitted to make a profit out of his own wrong". In view of the findings recorded by us hereinabove, we would have allowed the appeal in its entirety and would have quashed the proceedings initiated in 1992-93 by setting aside all orders passed in such proceedings. It, however, appears that an application was made by Hridya Narain Yadav, in which it was stated that the landholder had not disclosed full and correct facts in his return. Certain lands belonged to him and located in District of Darbhanga were not shown in the earlier proceedings. In other words, the allegation was that the landholder had played fraud upon the authorities and on the statute by not furnishing true and full facts as to the land possessed by him. If it is so, irrespective of statutory provisions, an appropriate action can be taken. Though the question was raised before the statutory authorities under the Act, the High Court (learned Single Judge as also the Division Bench) had decided the case only on the basis of Section 32B of the Act which could not have been done. In view of our findings as to non-applicability of Section 32B to the case on hand, we consider it appropriate to remit the matter to the Division Bench of the High Court to decide it afresh under the law as it stood prior to amendment by Bihar Act 55 of 1982. At the same time, however, the High Court will consider the case as to whether all requisite facts had been disclosed by the landholder when he filed return in 1973-74 or there was non-disclosure of certain lands. The Division Bench of the High Court will finally decide the matter after affording opportunity to all the parties. Let such a decision be taken as expeditiously as possible, preferably within six months from the receipt of the order of this Court. For the foregoing reasons, the appeal is partly allowed to the extent indicated

hereinabove. The matter is remitted to the High Court to decide it afresh in accordance with law. In the facts and circumstances of the case, there shall be no order as to costs.