
(2004) 08 PAT CK 0081
In the Patna High Court
Case No : CWJC No. 3316 of 2000

Baldeo Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-08-2004

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 15, 15(1), 32, 9

Citation : (2004) 3 BLJR 1694 : (2004) 4 PLJR 323 : (2000) 3 PLJR 682

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Katriar, J.—Heard Mr. A.P. Ambastha for the petitioner, and Mr. Abbas Haider, JC to GP-III. This writ petition is directed against the order dated 9.11.1999 (Annexure 5), passed by the learned Additional Member, Board of Revenue, Bihar, Patna in Case No. 47/96, whereby he has rejected the revision application of the present petitioner u/s 32 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act (hereinafter referred to as "the Act").

2. This arises out of land ceiling proceedings under the Act and the petitioner is the land-holder. He seems to have a large family and claimed a large number of units in the land ceiling proceedings on the ground that they were major on 9.9.1970. At the initial stage, he was granted 7 (seven) units. At a later stage of the proceeding, the petitioner was allowed 17 (seventeen) more units. The petitioner claimed 14 more units, over and above the aforesaid 24 units, which was rejected by the learned Collector of the district of West Champaran. The land-holder had preferred Revision Case No. 78/86 before the Board of Revenue assailing the Collector's order dated 20.9.1995, passed in Appeal Case No. 59/85-86. The same was allowed by the Board of Revenue and the matter was remitted to the learned Collector to consider the petitioner's claim for 14 more units over and above the 24 units already granted to him by the learned

Additional Collector by his earlier order dated 10.6.1985. The Board of Revenue had directed for ossification report.

3. Accordingly the Medical Board was constituted under the Chairmanship of the Civil Surgeon who had examined 12 persons produced by the petitioner. The petitioner did not produce two out of fourteen persons and it was, therefore, presumed that the two persons have given up their claim. In so far as the 12 persons are concerned, they were subjected to X-ray and ossification test. On the basis of such materials the Civil Surgeon submitted his report dated 21.7.1995 (Annexure 3) wherein it has been found that three of the 12 persons were below 40 years of age on the date of the report, namely, 21.7.1995. In other words, the three persons were minors on 9.9.1970 which has been accepted by the learned Collector of the district as well as the Board of Revenue in the impugned order. Their cases have not presented any difficulty and go out of the consideration. In so far as the remaining 9 persons are concerned, the Civil surgeon has stated in the report that they were above 40 years of age on 21.7.1995, and has stated that such ossification report may have the possible margin of error of one to two years. This report has to be read with the deposition of the Civil Surgeon before by the learned Collector, copies whereof are marked Annexure 3/1 to the report. On a consideration of the materials on record and the evidence of the Civil Surgeon, the learned Collector of the district passed the order dated 20.9.1995 (Annexure 4) in Ceiling Case No. 59/85-86, rejecting the claim of the 12 persons for extra units. The petitioner challenged the same by preferring Revision Case No. 47/96 which has been rejected by the impugned order.

4. Learned Government counsel supports the impugned order and submits that the matter may be remanded to the learned Collector of the District to constitute a fresh Medical Board.

5. On a consideration of the materials on record and consideration of the submissions of the learned counsel for the parties, it appears to me that in so far as the two persons are concerned, they go out of consideration because they did not appear before the Medical Board and it can be safely presumed that they have given up their claims. In so far as three persons are concerned, about whom the ossification report and the Civil Surgeon's evidence is that they were below 40 years of age on 21.7.1995 and, therefore, they were minor on 9.9.1970, their cases also fail. There is thus no difficulty in rejecting the claims of these persons.

6. The cases of the remaining 9 persons merit serious consideration. The learned Additional member has stated in his order that they were above 40 years of age on 21.7.1995. They were thus major on 9.9.1970. However, relying on the observations of the aforesaid deposition of the Civil Surgeon that there can be a possible margin of error of one to two years, the learned Additional member has concluded that he would prefer to hold that the 9 persons were minor on 9.9.1970. He has come to the conclusion primarily on the ground that the 9

persons had not been properly identified before the Collector and also that X-ray films were not taken in the presence of the Civil Surgeon. I would disagree with the reasoning of the learned Additional Member for the reason that the 9 persons who had gone for X-ray and ossification test were identified by the land-holder himself, and their identification was never in doubt or dispute when the X-ray films were taken before the doctors who examined them nor before the Collector himself. Therefore, there is no basis for the finding in the impugned order that the identification were not proper. In so far as the X-ray films having been taken by an operator is concerned, it cannot by itself create doubt about the authenticity of the X-ray. It is common knowledge that X-rays are generally not taken by senior doctors but by operators who are trained persons as has happened in the present case. Taking X-ray films does not need high level of training and skill, which can be done by a trained operator. Its decipherment needs high level of training and skill which cannot normally be done by an operator, and would need a qualified doctor as has happened in the present case, Furthermore, they were further examined by the Civil Surgeon and other members of the Board. Therefore, to say that the nine persons were not examined by proper persons is obviously an erroneous conclusion. On a plain reading of the medical report and the evidence of the Civil Surgeon (Annexure-3 series), I do not find any fault with the manner in which the ossification test was done, and the same was in fact handled by the medical board. As stated hereinabove, the medical board has concluded that these nine persons were clearly above the age of 40 years as on 21.7.1995. On the face of it, therefore, they appeared to be major on 9.9.1970.

7. The following portion from Modi's Medical Jurisprudence and Toxicology (21st Edition, page 40-41) is relevant in the present context :--

"In ascertaining the age of young persons according to Dr. H.S. Mehta, "from puberty to the consolidation of the skeleton, (about 18 years in girls and about 20-21 years in boys), a fairly close estimate within a margin of two years may be made, mainly on the progress of the epiphyseal union (ossification test)". This agrees with Flecker's observation. However a recent worker (using a statistical method very different from that used by all earlier workers in the field) has shown that the range of error in ossification test be upto 3 years if his statical method is used to compute age. The method of estimating age is to calculate the approximate age after considering (a) physical characteristics, (b) secondary sex characteristics, and (c) ossification tests and after allowing a margin of error of six months on either side. Thus if the sum total of all these test seems to indicate that the age is between 15 and 16, a margin of error of six months on either side would make, according to the recommended method, an estimated age of between 14-1/2 to 16-1/2 years."

It is thus manifest that the margin of error in the age- determination test can be on either side, could be higher or lower than the age determined by the doctor.

8. I would like to emphasise one aspect of the matter. Law is well settled that the

provisions of the Act are confiscatory in nature. The land-holder is deprived of his land where they have valid title to the same. Therefore, the Courts have held that in case of doubt or difficulty, it shall lean in favour of the land-holder. This is in contradistinction to the Bihar Land Reforms Act where the intermediary has had no title to the property and, therefore, such a benefit of doubt has never been given to them. Reference may be made to the judgment reported in Mahanth Brij Narain Das v. The State of Bihar and Ors., 2004 (1) BLJR 36. Paragraph 12 of the judgment is set out hereinbelow for the facility of quick reference :--

"12. There is one more aspect of the matter. The prescribed authority must remind themselves of the scope and content of Section 45-B of the Act before they take the decision to exercise the power. It is inherent in the provision that it is an extraordinary power which has to be seen in the background of the preceding provisions of the Act whereunder the land ceiling proceedings had been concluded and is sought to be re-opened had undergone the detailed procedure which is quite exhaustive. If such an approach is allowed to continue, the prescribed authority would be vested with arbitrary power to harass the land-holder for objects or reasons clearly beyond the scope of the provision and for mala fide reasons, as has happened in the present case. It may be relevant to compare the aim and object of the present Act in contradistinction of those of the Bihar Land Reforms Act. In so far as the latter is concerned the intermediary rights were taken away of the persons who had no title to the property, whereas the aim and object of the present Act is to deprive the land- holder of their title to the property. In other words, it is confiscatory in nature and, in case of doubt or difficulty, the Court would lean in favour of the land-holder,"

I, therefore, disagree with the view taken in the impugned order and set aside that part of the order whereby the following nine persons have been denied one unit each :--

1. Alok Prasad.
2. Abhik Kumar.
3. Ajay Prasad.
4. Vinay Prasad.
5. Dinesh Prasad.
6. Rajesh Prasad.
7. Suresh Prasad.
8. Akhilesh Prasad.
9. Pravesh Prasad.

Accordingly, the learned Collector of the district is directed to give option to these nine persons in terms of Section 9 of the Act.

9. This writ petition is allowed in the manner indicated hereinabove, and the impugned order dated 9.11.1999 (Annexure-5), passed by the learned Additional Member, Board of Revenue, Bihar, Patna, in Case No. 47/96, is Pro Tanto set aside. Accordingly, the notification u/s 15(1) of the Act published in the District Gazette bearing No. 2720, dated 1.10.2002 (Annexure-6), is hereby quashed.