

(1977) 08 PAT CK 0028
In the Patna High Court
Case No : C.W.J.C. No. 786 of 1977

Balmukund Mandal and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-08-1977

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act,
1961 — Section 10(3), 20
Constitution of India, 1950 — Article 226, 227

Citation : (1997) 2 PLJR 477

Hon'ble Judges : S.P. Singh, J;H.L. Agrawal, J

Bench : Division Bench

Advocate : Kailash Roy and Binod Kumar Roy, for the Appellant; S.B.N. Singh and Basant Kumar Singh, for the Respondent

Final Decision : Allowed

Judgement

H.L. Agrawal, J.—This application under Articles 226 and 227 of the Constitution of India arises out of a proceeding initiated under the provisions of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the Act).

2. A ceiling case bearing No. 8/213 of 1973-74 was started by the Additional Subdivisional Officer, Madhepura, for determining the ceiling area, of the land held by Petitioner No. 1. In the said proceeding, a draft statement was published by the Additional Subdivisional Officer by his order dated 6.11.1975. with regard to 96.18 acres of Class III lands, and 15.10 acres of Class IV land, that is 111.28 acres of land in all. Petitioner No. 1 was allowed to retain 50 acres of land in terms of Class III for two units, that is, for himself and his eldest son Krishna Ballav Yadav, Petitioner No. 2, and 0.92 acres of land was allowed to be exempted u/s 20 of the Act, and 57.83 acres of land, was shown and published as surplus lands.

3. Petitioner No. 1, after receipt of the draft statement, filed an objection u/s

10(3) of the Act. The case of the Petitioner No. 1 was that he was entitled to four units, that is, two units more for, his two other sons, namely, Petitioner Nos. 3 and 4 who had attained majority before 9.9.1970, the appointed day. In support of his case, the Petitioner No. 1 had produced a certificate of the Civil Assistant Surgeon and some other documents. According to the report of the Civil Assistant Surgeon (Annexure 1 Series), Petitioner Nos. 3 and 4 were aged more than 24 years on 27.12.1975. Petitioner No. 1 had also filed a horoscope and his affidavit in support of the majority of Petitioner Nos. 3 and 4. The Additional Subdivisional Officer, the appellate authority, that is, the Collector, and the Additional Member, Board of Revenue, have rejected this claim of the Petitioners and, accordingly, the Petitioners have filed the present writ application.

4. At the time of admission of the writ application on 28.4.1977, Petitioner No. 1 was ordered to file an ossification report of Petitioner Nos. 3 and 4 by the Civil Surgeon, Patna. Accordingly, on 24th June, 1977, X" Ray report of bones of those Petitioners were sent to the Professor of Radiologist, Patna Medical College Hospital, and with reference to the said report, the Civil Surgeon-cum-Medical Officer by his Memo No. 5483, dated 26.6.1997, has reported that both the said Petitioners were above the age of 25 years. The Board of Revenue has rejected the claim of the Petitioners only with reference to their dates of birth as mentioned in their matriculation certificates and has rejected the other evidence produced by them in support of their claim.

5. It has been observed in a series of decisions by this Court that the onus to prove that a person was minor lay upon the State. No evidence, whatsoever, has been laid in this case on behalf of the State to controvert the claim of Petitioner Nos. 3 and 4 that they had already attained majority on the appointed day, that is 9.9.1970. The Petitioners have produced all possible evidence in support of their claim, such as the affidavit of the father (Petitioner No. 1) the horoscope and the Medical certificates of the Civil Assistant Surgeon of Forbesganj, before Respondent No. 4. The authorities, however, preferred to place reliance upon and determine the age according to the dates of birth of Petitioner Nos. 3 and 4 appearing in their matriculation certificates and have rejected other evidence to the contrary, produced on behalf of the Petitioners.

6. The Supreme Court in the case of Brij Mohan Singh v. Priya Brat Narayan Singh and Ors. (AIR 1965 SC 288) had occasion to consider the value of the entry of the date of birth in School admission register and in that connection observed that in actual life, it often happens that persons giving false age of the boy at the time of his admission to a school so that later in life, he would have an advantage when seeking public service. Petitioner No. 1, the father of Petitioner Nos. 3 and 4, has actually in his affidavit that was filed before the authorities, has stated that an incorrect date of birth of Petitioners 3 and 4 was given in the school for the purpose of securing advantage in future. In view of the exparte evidence on record, some of which are scientific in nature, and appear to me so convincing, no useful purpose would be served in remanding the matter to

Respondent No. 4 namely the Additional Sub-divisional Officer, Madhepura, for deciding the question of the age of Petitioner Nos. 3 and 4 afresh. Having examined the materials on record, I am of the view that the Respondent 2 to 4 were not right in basing their conclusions only on the matriculation certificates and rejecting the other evidence on record altogether, particularly when the State did not adduce any evidence in rebuttal. I would, accordingly, hold that the order of Respondent No. 4 affirmed in appeal by the Collector and on revision by the Additional Member, Board of Revenue, to this extent is erroneous and must be set aside.

7. I would, accordingly, allow this application and quash the orders of the Additional Subdivisional Officer, affirmed in appeal by the Collector and on revision by the Additional Member, Board of Revenue, Patna, as contained in Annexures 4, 5 and 7 respectively to this petition, and hold that Petitioner Nos. 3 and 4 were major on 9.9.1970, that is, the appointed day, and were, therefore, entitled to separate units for themselves under the provisions of the Act. In other words, the Petitioners are entitled to four units in all. The view expressed to the contrary by the authorities in the order in Annexures 4, 5 and 7 is set aside. Let an appropriate writ issue accordingly. In the circumstances of the case, there will be no order as to costs.

Shambhu Prasad Singh, J.

8. I agree.